

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

LISA LYNNE RUSSELL

Chief

GUILLERMO A. MONTERO

Assistant Chief

SEAN C. DUFFY (NY Bar. No. 4103131)

Trial Attorney

Natural Resources Section

601 D Street NW

Washington, DC 20004

Telephone: (202) 305-0445

Facsimile: (202) 305-0506

sean.c.duffy@usdoj.gov

Attorneys for Federal Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

KELSEY CASCADIA ROSE JULIANA, et al., Case No. 6:15-cv-01517-TC
Plaintiffs,

v.

**FEDERAL DEFENDANTS' MOTION
TO CERTIFY ORDER FOR
INTERLOCUTORY APPEAL**

Expedited Hearing Requested

UNITED STATES OF AMERICA, et al.,
Federal Defendants.

MOTION

Pursuant to 28 U.S.C. § 1292(b), the United States respectfully moves the Court to certify its Opinion and Order of November 10, 2016 ("November Order") to the United States Court of Appeals for the Ninth Circuit for interlocutory appeal. Specifically, Federal Defendants request that the Court certify the following questions for interlocutory appeal:

1. Did Plaintiffs adequately allege the invasion of a legally protected and judicially-cognizable interest in maintaining “a climate system capable of sustaining human life,” when the alleged injury is widely shared by essentially every member of society?
2. Did Plaintiffs adequately plead the causation element of standing by alleging that the Defendant agencies have jurisdiction over various aspects of the production, transportation, and consumption of fossil fuels, and that the aggregate effect of all emissions within their jurisdiction over decades has caused alleged climate-related injuries, without alleging that the agencies failed to comply with some specific legal duty imposed by statute or that such specific failure caused the climate injuries they assert?
3. Did Plaintiffs adequately plead the redressability element of standing by simply alleging that the Court can redress their injuries with an order directing the Federal Defendants to do whatever is necessary to reduce CO₂ concentrations in the atmosphere to a level that will avoid climate-related harms, without specifying particular wrongful government actions or inactions whose correction by the Court would likely result in lessening the Plaintiffs’ injuries, and without alleging that Defendants are authorized by statute to carry out the relief they seek?
4. Do Plaintiffs have a constitutionally-protected fundamental life, liberty, or property interest in a “climate system” with a particular atmospheric level of CO₂, and if so, do federal agencies have a duty to protect that fundamental interest by taking actions that would sharply reduce CO₂ emissions, even if those actions would not be based in, or would otherwise contravene, existing statutes and regulations pertaining to, *inter alia*, the development, transportation and consumption of fossil fuels?
5. Do Plaintiffs have a cognizable claim under the public trust doctrine for protection of the atmosphere or coastal areas from CO₂ emissions that may result from actions or non-actions of federal agencies?

In addition, given the significance of the issues raised and the burden that discovery is likely to impose, Federal Defendants respectfully request an expedited determination on this motion, and specifically ask for a determination by April 10, 2017.¹ To assist in having this motion promptly briefed, Federal Defendants will file their reply within seven days after service of the response.

¹ Pursuant to Local Rule 7-1(a), the parties conferred on this motion and the request for expedition. Plaintiffs oppose this motion and the request for expedited consideration. Intervenor-Defendants do not oppose this motion nor the request for expedited consideration.

As set forth in the accompanying memorandum, certification for interlocutory review is appropriate because the November Order addresses several controlling questions of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation.

Dated: March 7, 2017

Respectfully submitted,
JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

/s/ Sean C. Duffy
LISA LYNNE RUSSELL
GUILLERMO A. MONTERO
SEAN C. DUFFY (NY Bar. No. 4103131)
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
601 D Street NW
Washington, DC 20004
Telephone: (202) 305-0445
Facsimile: (202) 305-0506
sean.c.duffy@usdoj.gov

Attorneys for Federal Defendants

Certificate of Service

I hereby certify that on March 7, 2017 I filed the foregoing with the Clerk of Court via the CM/ECF system, which will provide service to all attorneys of record.

/s/ Sean C. Duffy
Sean C. Duffy

Attorney for Federal Defendants